

TO: Air Quality Board

THROUGH: Bryce C. Bird, Executive Secretary

FROM: Alan Humpherys, Minor New Source Review Manager; and
David Beatty, Operating Permits Section Manager

DATE: June 3, 2020

SUBJECT: PROPOSE FOR PUBLIC COMMENT: Amend R307-401. Permit: New and Modified Sources, R307-415-9. Permits: Operating Permits Requirements. Fees for Operating Permits, and R307-801-1. Utah Asbestos Rule. Purpose and Authority.

During the 2020 legislative session, the State Legislature passed Senate Bill 88, Environmental Quality Revisions (S.B. 88). This bill cleaned up statutory language within for of the Department of Environmental Quality, including certain sections of the Utah Code specific to air quality, namely Sections 19-1-201, 19-2-108, and 19-2-109.1. The amendments to R307-401, *Permits: New and Modified Sources*, and R307-415-9. *Fees for Operating Permits*, incorporate these changes into the air quality rules. The amendments to R307-801-1, *Utah Asbestos Rule. Purpose and Authority*, correct references to the Utah Code as modified by Senate Bill 88.

S.B. 88 aligned the process of establishing the Operating Permits Fees with the current process employed by the Department of Environmental Quality and the Legislature. Under the current process, the Department develops a draft fee schedule annually as required by Section 63J-1-504 of the Utah Code. That fee schedule is subject to a public hearing and then submitted to the Legislature to seek “the Legislature’s approval as part of the department’s annual appropriations request.”¹ The Legislature may increase, decrease, or reject the fee schedule, which then triggers the Department’s obligation to “modify the fee schedule to implement the Legislature’s actions.”² The schedule of fees becomes effective once the Legislature approves it and the Governor signs the bill containing the schedule of fees.

The proposed changes to R307-401 include the requirement that a source that must have a permit cannot operate without first having obtained such a permit. In other words, operation without a permit—and not merely a failure to obtain a permit—is now a violation of R307-401. Another change in R307-401 due to the statute amendments is that a source is required to pay the applicable New Source Review permitting fee as part of the permit application, and the permit application is not complete and the permit is not issued without the payment of the fee. The final changes in the rule are to clean up the language to match the statute.

A general amendment throughout the subsections of R307-415-9 allows for multiple annual emissions fees. The previous language in statute only allowed a single uniform annual fee based on the number of tons emitted. The revised language would allow the Department to charge varying fees that could include, or example, annual base fees; varying fees for different source sizes, types, and pollutant classes; administrative fees; etc. Additionally, there were multiple

¹ Utah Code § 19-1-201(2)(b) (as amended by Chapter 256, 2020 General Session).

² *Id.* § 63J-1-504(4)(d); *see also id.* § 63J-1-504(5)(b).

amendments throughout R307-415-9 to align with the state statute and clean up outdated language.

Recommendation: Staff recommends that the Board propose amended R307-401, R307-415-9, and R307-801 for public comment.